

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Epaminodas Avila Gonzalez

v.

Civil No. 22-cv-540-AJ

Warden, FCI Berlin

O R D E R

Petitioner Epaminodas Avila Gonzalez, while in the custody of the Federal Bureau of Prisons ("BOP"), filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 (Doc. No. 1) seeking application of time credits under the First Step Act, 18 U.S.C. § 3632 ("FSA"), and a finding that he is entitled to immediate release from prison. The parties appeared for a scheduled show cause hearing before the undersigned Magistrate Judge on January 20, 2023, at which Mr. Avila Gonzalez represented himself, and the respondent was represented by Assistant United States Attorney Heather Cherniske. Also appearing, for the BOP, was Attorney Stephanie Scannell-Vessella. The parties have consented to the jurisdiction of the Magistrate Judge in this case.

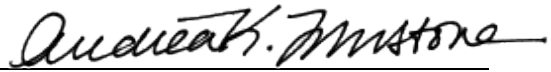
As stated on the record at the January 20, 2023 hearing, and based on the materials before the Court, including those in the record of this case, and Respondent's Hearing Exhibit A-8, and for the reasons set forth in the January 13, 2023 Report and

Recommendation issued in Komando v. FCI Berlin Warden, No. 22-cv-425-SE, 2023 WL 310580 (Jan. 13, 2023 D.N.H.), the Court finds that, upon application of Mr. Avila Gonzalez's earned FSA time credits, as set forth in the Time Credit Assessment (Resp't's Ex. A-8) to the sentencing calculation attached to the respondent's motion for summary judgment (Doc. No. 6-3), Mr. Avila Gonzalez is entitled to immediate release from BOP custody upon time served, as he has satisfied the incarcerative portion of his sentence in United States v. Avila Gonzalez, No. 17-cr-20793-KMW-1 (S.D. Fla. Apr. 26, 2018). The Court notes that, at the hearing, the parties did not make additional legal arguments and relied instead on those in their filings, and that the respondent has waived an exhaustion defense in this case. The Court therefore orders that Mr. Avila Gonzalez be immediately released from BOP custody to begin his term of supervised release in the Southern District of Florida.

It is the Court's understanding that, upon his release from BOP custody, U.S. Immigration and Customs Enforcement ("ICE") will take Mr. Avila Gonzalez into its custody pursuant to an immigration detainer. The Court further understands that FCI Berlin officials and/or the U.S. Marshals Service have already

provided Mr. Avila Gonzalez with his personal belongings.

SO ORDERED.


Andrea K. Johnstone
United States Magistrate Judge

January 20, 2023

cc: Epaminodas Avila Gonzalez, pro se
Heather A. Cherniske, Esq.